Lai Mui Nee (F) (personal representative to represent the estates of Wong Si Yii and Tiong Kai Chiat @ Tiong Chung Wai (deceased)) v Wanwood Sdn Bhd & Ors

HIGH COURT (MIRI) — CASE NO 22–36 OF 2001(MR)
STEPHEN CHUNG J
18 MARCH 2014

Civil Procedure — Appeal — Appeal against decision of senior assistant registrar — Application to set aside ex parte order — Receiving and adjudication order — Whether trial had been completed

This was an appeal by the plaintiffs against the decisions of the senior assistant registrar ('SAR') in allowing the defendants' application in encl 11 and in dismissing the plaintiffs' application in encl 14. Enclosure 11 was the defendants' application to set aside an ex parte court order to appoint one Lau Mui Nee ('LMN') as the personal representatives of the plaintiffs in this suit. Enclosure 14 was the plaintiffs' application to set aside the receiving order ('RO') and adjudication order ('AO') entered against the second plaintiff. The first and second plaintiffs sued the defendants. The plaintiffs' claim against Netasset Development Sdn Bhd was struck out. The first plaintiff died and the second plaintiff was appointed as the representative of the first plaintiff. The trial completed and pending decision of the High Court judge. On the same day, the second plaintiff was adjudged bankrupt. The plaintiffs' suit was dismissed with costs. The plaintiffs filed an appeal and when the second plaintiff died, the Court of Appeal struck out the plaintiffs' appeal. The plaintiffs filed an ex parte application to appoint LMN to act as the personal representative of the estates of the plaintiffs. The ex parte order was granted in terms. By encl 11, the defendants applied to set aside the court order.

Held, dismissing the appeal with costs of RM1,000:

(1) The trial of this suit had been completed. The plaintiffs' claims against the defendants had been dismissed and the plaintiffs' appeal to the Court of Appeal had been struck out. There was no claim or interest or liability in the proceedings in this suit or cause or matter to be determined and or to be adjudicated upon and no proceedings to be carried on. After the judgment had been delivered and the appeal had come to an end, the proceedings had been concluded and there is no longer a proceeding in existence for LMN to intervene in or to be substituted as a party in the proceeding. Therefore, there was no necessity for LMN to intervene and to be made the personal representative of the estates of the plaintiffs (see para 6).

(2) In her application to be made the personal representative of the estates of the plaintiffs, LMN did not have and did not produce any letters of administration or probate to appoint her as the administrator or representative of the two estates. In failing to do so she had no standing to be appointed as such. The SAR was right in allowing the defendants' application to set aside the ex parte order. Therefore, LMN had no standing and not entitled to file the application to set aside the RO and AO on behalf of the plaintiffs, both of whom had passed away (see para 7).

(3) The bankruptcy proceedings against the second plaintiff was filed in Sibu High Court and the RO and AO against the second plaintiff were entered by the High Court at Sibu. Obviously the application to set aside the RO and AO should be filed in the High Court at Sibu and not in Miri. The merits of the application to set aside the RO and AO should be heard and decided by the High Court at Sibu and not by the High Court at Miri. Therefore encl 14 was defective and ought to be struck out (see para 9).

[**Bahasa Malaysia summary**

Ini adalah rayuan oleh plaintif-plaintif terhadap keputusan timbalan kanan pendaftar ('TKP') dalam membenarkan permohonan defendan dalam lampiran 11 dan dalam menolak permohonan plaintif-plaintif dalam lampiran 14. Lampiran 11 adalah permohonan defendan-defendan untuk mengetepikan perintah mahkamah ex parte untuk melantik seorang yang bernama Lau Mui Nee ('LMN') sebagai wakil peribadi plaintif-plaintif dalam tindakan ini. Lampiran 14 adalah permohonan plaintif-plaintif untuk mengetepikan perintah penerimaan ('RO') dan perintah penghakiman ('AO') yang dimasukkan terhadap plaintif kedua. Plaintif-plaintif pertama dan kedua menyaman defendan-defendan. Tuntutan plaintif-plaintif terhadap Netasset Development Sdn Bhd dibatalkan. Plaintif pertama meninggal dunia dan plaintif kedua dilantik sebagai wakil plaintif pertama. Perbicaraan selesai dan menunggu keputusan hakim Mahkamah Tinggi. Pada hari yang sama, plaintif kedua dijatuhkan hukuman bankrap. Tindakan plaintif ditolak dengan kos. Plaintif-plaintif memfailkan rayuan dan apabila plaintif kedua meninggal dunia, Mahkamah Rayuan membatalkan rayuan plaintif-plaintif. Plaintif-plaintif memfailkan permohonan ex parte untuk melantik LMN untuk bertindak sebagai wakil peribadi estet plaintif-plaintif. Perintah ex parte diberikan mengikut syarat. Melalui lampiran 11, defendan-defendan memohon untuk mengetepikan perintah mahkamah.

Diputuskan, menolak rayuan dengan kos sebanyak RM1,000:

(1) Perbicaraan tindakan ini telah selesai. Tuntutan plaintif-plaintif terhadap defendan-defendan telah ditolak dan rayuan plaintif-plaintif kepada Mahkamah Rayuan telah dibatalkan. Tidak terdapat tuntutan atau faedah atau liabiliti dalam prosiding dalam tindakan ini atau kausa atau

perkara untuk ditentukan dan atau untuk dihakimi dan tiada prosiding untuk dilaksanakan. Selepas penghakiman diputuskan dan rayuan telah sampai ke peringkat akhir, prosiding terpaksa ditamatkan dan tiada lagi prosiding wujud untuk LMN campur tangan atau diganti sebagai pihak dalam prosiding. Oleh itu, tidak perlu untuk LMN campur tangan dan dijadikan wakil peribadi estet plaintif-plaintif (lihat perenggan 6).

(2) Dalam permohonannya untuk mejadikannya sebagai wakil peribadi estet plaintif-plaintif, LMN tidak mempunyai dan tidak mengemukakan apa-apa surat pentadbiran atau probet untuk melantiknya sebagai pentadbir atau wakil kedua-dua estet. Kerana gagal berbuat sedemikian dia tidak dapat dilantik sebagai wakil. TKP adalah betul dalam membenarkan permohonan defendan-defendan untuk mengetepikan perintah ex parte. Oleh itu, LMN tidak dapat dan tidak berhak untuk memfailkan permohonan untuk mengetepikan RO dan AO bagi pihak plaintif-plaintif, yang mana kedua-duanya telah meninggal dunia (lihat perenggan 7).

(3) Prosiding kebankrapan terhadap plaintif kedua difailkan di Mahkamah Tinggi dan RO dan AO terhadap plaintif kedua adalah dimasuki oleh Mahkamah Tinggi di Sibu. Secara jelas permohonan untuk mengetepikan RO dan AO sepatutnya difailkan di Mahkamah Tinggi di Sibu bukan di Miri. Merit permohonan untuk mengetepikan RO dan AO patut didengar dan diputuskan oleh Mahkamah Tinggi Sibu dan bukan Mahkamah Tinggi Miri. Oleh itu lampiran 14 adalah cacat dan patut dibatalkan (lihat perenggan 9).]]

Notes

For cases on appeal against decision of senior assistant registrar, see 2(1)*Mallal's Digest* (4th Ed, 2014 Reissue) paras 840–851.

Cases referred to

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (refd)

Legislation referred to

Rules of Court 2012 O 15 r 7(1), (2)

Tai Choi Yu (Tai Choi Yu & Co) for the plaintiff.
Bernard Chung (Chung, Lu & Co) for the first, second, third, fourth and fifth defendants.
Gisela Mathew for DGI.

Stephen Chung J:

RULING

[1] This is an appeal by the plaintiffs against the decisions of the senior assistant registrar ('SAR') in allowing the defendants' application in encl 11 and in dismissing the plaintiffs' application in encl 14.

[2] Enclosure 11 is the defendants' application to set aside an exparte court order given on 5 August 2013 to appoint one Lau Mui Nee ('LMN') as the personal representatives of the plaintiffs in this suit.

[3] Enclosure 14, dated 30 August 2013, is the plaintiffs' application to set aside the receiving order ('RO') and adjudication order ('AO') entered against the second plaintiff in Sibu Bankruptcy Proceedings No 29–278 of 2008.

[4] The facts are as follows. In Suit No 22–36 of 2001(MR) the first and second plaintiffs sued the defendants. On 28 June 2002, the plaintiffs' claim against Netasset Development Sdn Bhd (sixth defendant) was struck out. The first plaintiff died on 9 October 2002 and the second plaintiff was appointed as the representative of the first plaintiff on 23 January 2008 in the suit. The trial completed on 14 April 2009 and pending decision of the High Court judge. On the same day the second plaintiff was adjudged bankrupt in Sibu Bankruptcy Proceedings No 29–278 of 2008 on the petition of Netasset Development Sdn Bhd. On 4 December 2008 the plaintiffs' suit was dismissed with costs. The plaintiffs filed an appeal vide Civil Appeal No Q-02–249 of 2010 to the Court of Appeal. The second plaintiff died on 18 November 2012. On 26 August 2013 the Court of Appeal struck out the plaintiffs' appeal. On 2 August 2013, the plaintiffs filed an exparte application to appoint LMN to act as the personal representative of the estates of the plaintiffs in this suit. The exparte order was granted in terms on 5 August 2013. By encl 11, the defendants applied to set aside the court order given on 5 August 2013.

[5] Order 15 r 7(1) of the Rules of the Court 2012 provides that where a party to an action dies or becomes bankrupt but the action survives, the action shall not abate by reason of the death or bankruptcy. Order 15 r 7(2) states that where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the court may, if it thinks it is necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first-mentioned party.

[6] Firstly, on the facts and circumstances of this case, the trial of this suit had been completed. The plaintiffs' claims against the defendants had been dismissed and the plaintiffs' appeal to the Court of Appeal had been struck out. There is no claim or interest or liability in the proceedings in this suit or cause or matter to be determined and or to be adjudicated upon and no proceedings to be carried on. After the judgment had been delivered and the appeal had come to an end, the proceedings had been concluded and there is no longer a proceeding in existence for LMN to intervene in or to be substituted as a party in the proceeding. Therefore there is no necessity for LMN to intervene and to be made the personal representative of the estates of the plaintiffs (see *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121).

[7] Secondly, in her application to be made the personal representative of the estates of the plaintiffs, LMN did not have and did not produce any letters of administration or probate to appoint her as the administrator or representative of the two estates. In failing to do so she had no standing to be appointed as such. The SAR was right in allowing the defendants' application to set aside the exparte order given on 5 August 2013. Therefore LMN has no standing and not entitled to file the application to set aside the RO and AO on behalf of the plaintiffs, both of whom had passed away.

[8] Further, in respect of encl 14, this appeal was served on the first to fifth defendants. It must be noted that on 28 June 2002 the plaintiffs' claim against the sixth defendant had been struck out. The petition to adjudge the second plaintiff bankrupt was filed by Netasset Development Sdn Bhd who is not a party in the suit nor in this appeal. The appeal is defective.

[9] It should also be noted that the bankruptcy proceedings against the second plaintiff was filed in Sibu High Court and the RO and AO against the second plaintiff were entered by the High Court at Sibu. Obviously the application to set aside the RO and AO should be filed in the High Court at Sibu and not in Miri. The merits of the application to set aside the RO and AO should be heard and decided by the High Court at Sibu and not by the High Court at Miri. Therefore encl 14 is defective and ought to be struck out.

[10] For the reasons given, the appeal is dismissed with costs of RM1,000 to be paid by LMN.*Appeal dismissed with costs of RM1,000.*

Reported by Afiq Mohamad Noor